

**ATTORNEY GENERAL
DEPARTMENT OF JUSTICE**

33 CAPITOL STREET
CONCORD, NEW HAMPSHIRE 03301-6397

KELLY A. AYOTTE
ATTORNEY GENERAL



MICHAEL A. DELANEY
DEPUTY ATTORNEY GENERAL

August 5, 2005

Section 5 Submission

Chief, Voting Section
Civil Rights Division
Room 7254 – NWB
Department of Justice
950 Pennsylvania Ave., NW
Washington, DC 20006

Re: Submission Under Section 5 of the Voting Rights Act for:

New Hampshire Revised Statute Annotated ("RSA") 654:13, a STATUTE related to forwarding of registration forms by the supervisors of the checklist, most recently amended by Laws of 2003 Chapter 289 and previously amended by the chapters cited below.

Dear Voting Section Chief:

Pursuant to 42 U.S.C. § 1973 (c), the State of New Hampshire, through the Office of the New Hampshire Attorney General, hereby submits RSA 654:13, a STATUTE related to forwarding of registration forms by the supervisors of the checklist, most recently amended by Laws of 2003 Chapter 289 and previously amended by the chapters cited below.

SUBMISSION:

In accordance with 28 C.F.R. § 51.27, the submission is as follows:

- a) Chapter 289 (2003) amending RSA 654:13 is attached. (Exhibit 654:13 A)
 - 1. Chapter 199 (1987) amending RSA 654:13 is attached. (Exhibit 654:13 B)

- b) Chapter 436 (1979) recodifying RSA 55:09-b and RSA 55:14-a as RSA 654:13 is attached. (Exhibit 654:13 C)
- c) The changes made by amendments to RSA 654:13 are as follows:
 - 1. Chapter 289 (2003) removes the word “*triplicate*” from the statute
 - 2. Chapter 199 (1987) inserts the following phrase “...*Vermont, Maine, Massachusetts, Connecticut, or Rhode Island...*” following the word “*New Hampshire*” in paragraph I of this statute
 - 3. Chapter 436 (1979) recodified RSA 55:09-b and RSA 55:14-a as RSA 654:13
- d) This submission is made by: Senior Assistant Attorney General Orville B. Fitch II, 33 Capitol Street, Concord, New Hampshire 03301, Phone: (603) 271-1238.
- e) The submitting authority is New Hampshire Attorney General, Kelly A. Ayotte for the State of New Hampshire.
- f) Not applicable.
- g) The changes for which pre-clearance is sought were made by a decision of the New Hampshire General Court (Legislature).
- h) In accordance with Amendment X of the U.S. Constitution, the New Hampshire General Court, the State’s legislature, acting pursuant to the New Hampshire Constitution Part Second, Article 2, granting supreme legislative power within the state to the House and Senate, who with right to negate each other are granted power to make law through Part Second, Article 5. Additional authority regarding election law is vested in Part First, Article 11.

The legislature through a bicameral process passed law to create Chapter 289 (Exhibit 654:13 A). The bill was signed into law (by the Governor) on July 18, 2003, pursuant to New Hampshire Constitution Part Second, Article 44.
- i) Adoption dates:
 - 1. Chapter 289 (2003) adopted July 18, 2003
 - 2. Chapter 199 (1987) adopted May 15, 1987

3. Chapter 436 (1979) adopted June 25, 1979
- j) Effective dates:
1. Chapter 289 (2003) effective September 1, 2003
 2. Chapter 199 (1987) effective July 14, 1987
 3. Chapter 436 (1979) effective July 1, 1979
- k) The changes have been enforced.
- l) The changes affect the entire State of New Hampshire.
- m) The purpose for the changes are as follows:
1. The purpose of the Chapter 289 (2003) change is to update this section to match the changes made to RSA 654:7, by the same chapter law, removing the requirement of a triplicate form.
 2. The purpose of the Chapter 199 (1987) change is to expand the area supervisors of the checklist are required to mail copies of new voter registration forms to include not only towns in New Hampshire but towns in Vermont, Maine, Massachusetts, Connecticut and Rhode Island, basically notifying other New England states when a voter is added to a checklist in New Hampshire. These notifications allow the officials in the town/city where the voter was previously registered to remove the voter from that checklist, thereby, aiding in keeping checklists accurate.
 3. The purpose of the Chapter 436 (1979) change is to recodify RSA 55:09-b and RSA 55:14-a as RSA 654:13.
- n) These changes do not negatively target any protected class under section 5 of the Voting Rights Act of 1965. 42 U.S.C. § 1973 (c). They are expected to have neutral impact and do not meet the test of retrogression defined in *Reno v. Bossier Parish Sch. Bd*, 520 U.S. 471, 478 (1997). “(T)he ability of minority groups ... to elect their choices to office” will not be diminished. *Beer v. U.S.*, 425 U.S. 130, 141 (1976).
- o) None known.

- p) RSA 654:13 was precleared through 1979 on June 22, 2004 by D.O.J. file numbers 2004-2563, 2004-2581 and 2004-2582. A copy of this preclearance is attached as Exhibit 654:13 D. This submission seeks preclearance of all subsequent changes.
- q) Not applicable as this is not a redistricting plan.
- r) Exhibit 654:13 E is a copy of a Press Release of this submission, its availability, and inviting comment to federal Department of Justice.

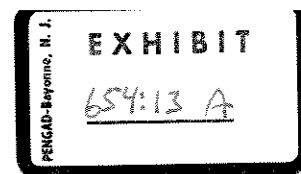
I expect the foregoing information is sufficient to enable the United States Attorney General to make the required determination pursuant to Section 5 of the Voting Rights Act. If further information is required or would be helpful, please contact me.

Very truly yours,



Orville B. Fitch II
Senior Assistant Attorney General
Civil Bureau
(603) 271-1238
bud.fitch@doj.nh.gov

87886.doc



CHAPTER 289

HB 627-FN - FINAL VERSION

25mar03... 0694h

25mar03... 0946h

05/22/03 1640s

24jun03... 2155CofC

30jun03... 2316eba

2003 SESSION

03-0294

03/10

HOUSE BILL **627-FN**

AN ACT relative to domicile for voting purposes, penalties for voter fraud, and access to preserved ballots.

SPONSORS: Rep. Drisko, Hills 46; Rep. Lockwood, Merr 35; Rep. Naro, Graf 15; Rep. Whalley, Belk 31; Sen. Roberge, Dist 9

COMMITTEE: Election Law

AMENDED ANALYSIS

This bill:

- I. Establishes civil penalties for wrongful voting.
- II. Modifies procedures for voter registration and absentee voting.
- III. Modifies the laws concerning domicile as it relates to voting and eligibility for office.
- IV. Exempts preserved ballots from RSA 91-A, the right-to-know law.

This bill is a request of committee established by 2002, 15.

Explanation: Matter added to current law appears in ***bold italics***.

Matter removed from current law appears [~~in brackets and struck through.~~]

Matter which is either (a) all new or (b) repealed and reenacted appears in regular type.

Matter which is either (a) all new or (b) repealed and reenacted appears in regular type.

25mar03... 0694h

registering to vote or voting is a class A misdemeanor with a maximum sentence of imprisonment not to exceed one year and a fine not to exceed \$2,000. Fraudulently registering to vote or voting is subject to a civil penalty not to exceed \$5,000.

Absence Because of Religious Observance or Physical Disability. A person voting by absentee ballot because of religious observance or physical disability shall fill out and sign the following certificate:

I do hereby certify, under the penalties ~~[of perjury]~~ ***for voting fraud set forth below***, that I am a ~~[duly qualified]~~ voter in the town (city, village district, school district) of _____, New Hampshire, that I will be observing a religious commitment which prevents me from voting in person, or that on account of physical disability I am unable to vote in person; that I have carefully read the instructions forwarded to me with the ballot herein enclosed, and that I personally marked the within ballot and sealed it in this envelope.

(Signature) _____

In accordance with RSA 659:34, the penalty for knowingly or purposefully providing false information when registering to vote or voting is a class A misdemeanor with a maximum sentence of imprisonment not to exceed one year and a fine not to exceed \$2,000. Fraudulently registering to vote or voting is subject to a civil penalty not to exceed \$5,000.

289:48 Election Officer. Amend RSA 652:14 to read as follows:

652:14 Election Officer. "Election officer" shall mean any moderator, ***deputy moderator, assistant moderator***, town clerk, ***deputy town clerk, city clerk, deputy city clerk, ward clerk***, selectman, supervisor of the checklist, ***registrar, or deputy registrar*** ~~[or inspector of election]~~.

289:49 Voting Rights of Overseas Citizens. Amend RSA 654:3 to read as follows:

654:3 Voting Rights of Overseas Citizens. Notwithstanding any other provision of law to the contrary, any United States citizen being at least 18 years of age as provided in Article 11 of Part First of the Constitution of New Hampshire, who is domiciled ~~[in Canada or Mexico or in any other country]~~ outside the ~~[continental]~~ United States, shall have the right to register absentee to vote in any federal election in the town or city in New Hampshire in which he ***or she*** had his ***or her*** domicile immediately prior to his ***or her*** departure from the United States, even though he ***or she*** no longer maintains domicile in said town or city and even though his ***or her*** intent to return thereto is uncertain, provided:

I. He ***or she*** complies with all other applicable requirements and qualifications of the state of New Hampshire; and

II. He ***or she*** is not domiciled and is not registered to vote in any other state or election district of a state or in any territory or possession of the United States; and

III. He ***or she*** has a valid passport or card of identity issued under the authority of the Secretary of State of the United States.

289:50 General Voter Registration; Forms to be Forwarded. Amend RSA 654:9 to read as follows:

654:9 Forms to be Forwarded. The provisions of this section shall apply in all cities and in all towns. The town or city clerk shall present to the next meeting of the supervisors of the checklist the ~~[triplicate]~~ ***voter*** registration forms of all persons making application to ~~[him]~~ ***the clerk*** since the previous meeting of said supervisors.

289:51 General Voter Registration; Action by Supervisors. Amend RSA 654:13, I to read as follows:

I. If the supervisors decide to add the name of the applicant to the checklist, then they shall retain the original of the ~~[triplicate]~~ registration form for their own file, forward one copy to the supervisors of the checklist of the city or town of the applicant's last voting address if said address is in the state of New Hampshire, Vermont, Maine, Massachusetts, Connecticut, or Rhode Island, and send another copy to the clerk of their town or city.

289:52 Overseas Citizens Voting; Effect. Amend RSA 654:23 to read as follows:

or commission. The terms of alternate members shall be the same as those of the respective members and may be in addition to the alternates provided for in paragraph I.

197:2 Effective Date. This act shall take effect 60 days after its passage.

[Approved May 15, 1987.]

[Effective Date July 14, 1987.]

CHAPTER 198 (HB 193)

AN ACT RELATIVE TO LIQUOR STORE RELOCATION
AND MAKING AN APPROPRIATION THEREFOR.

Be it Enacted by the Senate and House of Representatives in General Court convened:

198:1 Appropriation. The sum of \$105,000 for the fiscal year ending June 30, 1988, is hereby appropriated to the state liquor commission to move the Suncook store to, and reestablish such store in, Allenstown. This appropriation is in addition to any other funds appropriated to the state liquor commission. The governor is authorized to draw his warrant for said sum out of any money in the treasury not otherwise appropriated.

198:2 Effective Date. This act shall take effect July 1, 1987.

[Approved May 15, 1987.]

[Effective Date July 1, 1987.]

CHAPTER 199 (HB 204)

AN ACT REQUIRING SUPERVISORS OF THE CHECKLIST IN THE NEW ENGLAND
STATES TO BE NOTIFIED WHEN A VOTER IS ADDED
TO A CHECKLIST IN NEW HAMPSHIRE.

Be it Enacted by the Senate and House of Representatives in General Court convened:

199:1 Forwarding Registration Form. Amend RSA 654:13, I to read as follows:

I. If the supervisors decide to add the name of the applicant to the checklist, then they shall retain the original of the triplicate registration form for their own file, forward one copy to the supervisors of the checklist of the city or town of the applicant's last voting address if said address is in the state of New Hampshire, Vermont, Maine, Massachusetts, Connecticut or Rhode Island, and send another copy to the clerk of their town or city.

199:2 Effective Date. This act shall take effect 60 days after its passage.

[Approved May 15, 1987.]

[Effective Date July 14, 1987.]



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(c) Proof of domicile in the form of an affidavit declaring that the applicant has a domicile and intends to maintain a domicile for an indefinite period in the town, city or ward in which he desires to vote; and

(d) any other evidence they may request.

II. The supervisors may refuse to add the name of an applicant to the checklist if he fails to present the evidence required by this section.

654:13 Action by Supervisors

I. If the supervisors decide to add the name of the applicant to the checklist, they shall retain the original of the triplicate registration form for their own file, forward one copy to the supervisors of the checklist of the city or town of the applicant's last voting address if said address is in the state of New Hampshire, and send another copy to the clerk of their town or city.

II. If the supervisors decide not to add the name of the applicant to the checklist, they shall send notification in writing to the applicant within 7 days stating the reason for the denial. They shall write the word "REJECTED" and the date of rejection across the registration form. They shall retain the original in a separate file for proof that such an application was made.

654:14 Complaint to Superior Court. Any applicant may file, as provided in RSA 654:42, a complaint with the superior court stating that his name has been illegally kept from the checklist and asking to have his name added thereto for the reasons stated in the complaint.

654:15 Party Registration. Whenever names are added to the checklist, the supervisors shall register the party membership of the voter if he desires such membership registered; but, if such voter has already been registered in any town or ward in this state as a member of any party, he shall not be registered as a member of a different party closer in time to the primary than the day immediately prior to the first day for the filing of a declaration of candidacy. The party membership of each voter may be registered by writing in ink, printing, or rubber stamping after the name of such voter the first 3 letters of the name of the party with which he registers.

Absentee Voter Registration

654:16 Applicability. Any person who has his domicile in any town or city in this state and is qualified to vote therein at the next subsequent election to be held in said town or city except for the fact that his name does not appear on the checklist to be used at the election, and who is temporarily absent therefrom or who by reason of physical disability is unable to attend a meeting of the supervisors of the checklist, may cause his name to be added to such checklist by applying to the city or town clerk or the secretary of state for a voter registration form provided for in RSA 654:7 and an appropriate absentee registration affidavit provided for in RSA 654:17.

654:17 Absentee Registration Affidavit

I. The absentee registration affidavit shall be prepared by the secretary of state and shall be in substantially the following form:

Affidavit (Absence from Town)

I, _____, do hereby depose as follows:

- 1) That my legal domicile is in the town of _____, New Hampshire, I will be of the age of 18 years or over on election day and am entitled to vote in the election to be held in said town on _____, 19____, except for the fact that my name does not appear on the checklist to be used in said town at such election;
- 2) That I do not intend to be present within said town at such time prior to

said election as shall enable me personally to appear before the supervisors of the checklist of said town in their regular sessions for the correction of the checklist for said election;

3) That I am temporarily residing in _____ (city and state or city, province and country); and

4) That I hereby make application for the addition of my name to the checklist of said town to be used at said election.

Signature of Applicant

Affidavit (Physical Disability)

I, _____ do hereby depose as follows:

1) That my legal domicile is in the town of _____ New Hampshire, I will be of the age of 18 years or over on election day and am entitled to vote in the election to be held in said town on _____, 19____, except for the fact that my name does not appear on the checklist to be used in said town at such election;

2) That I am unable by reason of physical disability personally to appear before the supervisors of the checklist of said town in their regular sessions for the correction of the checklist for said election;

3) That I hereby make application for the addition of my name to the checklist of said town to be used at said election.

Signature of Applicant

II. There shall be printed below each of the foregoing affidavits the following certificate:

Certificate

I, _____, the undersigned officer, do hereby certify that on the _____ day of _____, 19____, the above named, _____, having satisfied me as to his identity, subscribed the foregoing affidavit in my presence, and did before me swear to (or affirm) the truth of the statements therein contained.

Signature of Officer

Title

654:18 Forwarding. The voter registration form, absentee registration affidavit and certificates shall be forwarded directly to the applicant by the city or town clerk or by the secretary of state.

654:19 Execution; Submission; Effect. The absentee registration affidavit shall be executed before a person authorized to perform notarial acts pursuant to the provisions of RSA 456-A. Such officer, after affixing his certificate, shall attach thereto proof of his official capacity and the affidavit and certificate along with the applicant's registration of the town or city named for submission to the supervisor's checklist. If the supervisors find that the affidavit and certificate executed, they shall follow the procedure for applications provided in RSA 654:11, 654:13, and 654:15.

Overseas Citizens Voting: Federal Elections On

654:20 Affidavit; Certificate.

I. Any person qualified to vote as an overseas voter in a c





U.S. Department of Justice

Civil Rights Division

EXHIBIT

PENGAD 800-631-6989

654:13 0

JDR:RPL:SMC:jdh
DJ 166-012-3
2004-2563
2004-2581
2004-2582

Voting Section - NWB
950 Pennsylvania Avenue, N.W.
Washington, DC 20530

June 22, 2004

Orville B. Fitch II, Esq.
Assistant Attorney General
Civil Bureau
Department of Justice
33 Capitol Street
Concord, New Hampshire 03301-6397

Dear Mr. Fitch:

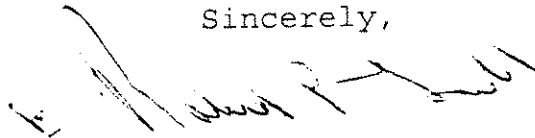
This refers to Session Law Chapter 436 (HB 575) (1979), which recodifies the election laws of the State of New Hampshire; Session Law Chapter 266 (HB 577) (2003), which implements the Help America Vote Act of 2002 (HAVA), 42 U.S.C. 15301-15545; and the adoption of formal administrative procedures for the resolution of election law complaints, including complaints filed under Title III of HAVA, submitted to the Attorney General pursuant to Section 5 of the Voting Rights Act, 42 U.S.C. 1973c. We received your submissions on June 7, 2004.

The Attorney General does not interpose any objection to the specified changes. Regarding Session Law Chapter 266, we note that the act specifically amends the following provisions of the State's election laws: RSA 655:19, II (Chapter 387 (1991)) (to provide for the deposit of certain candidate filing fees collected by the secretary of state into the election fund); RSA 655:19-c (Chapter 387 (1991)) (to provide for the deposit of any administrative assessments paid to the secretary of state into the election fund); RSA 664:3, I (Chapter 351 (1997)) (to provide for the deposit of political committee registration fees paid to the secretary of state into the election fund); RSA 664:21, II (Chapter 351 (1997)) (to provide for the deposit of any administrative fines for violations of the State's campaign finance laws into the election fund); and RSA 665:7 (Chapter 436 (1979)) (to authorize the Ballot Law Commission to hear and resolve complaints alleging violations of Title III of HAVA, as specified).

We note also that Section 5 expressly provides that the failure of the Attorney General to object does not bar subsequent litigation to enjoin the enforcement of the changes. In addition, as authorized by Section 5, we reserve the right to reexamine this submission if additional information that would otherwise require an objection comes to our attention during the remainder of the sixty-day review period. See Procedures for the Administration of Section 5 of the Voting Rights Act (28 C.F.R. 51.41 and 51.43).

Session Law Chapter 266 includes provisions that are enabling in nature. Therefore, the State is not relieved of its responsibility to seek Section 5 preclearance of any changes affecting voting proposed to be implemented pursuant to this legislation (e.g., creation of a centralized statewide voter registration database by the secretary of state and guidelines issued by the secretary of state implementing the database). See 28 C.F.R. 51.15.

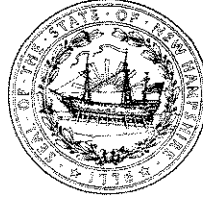
Sincerely,

A handwritten signature in dark ink, appearing to read "Joseph D. Rich", is written over a horizontal line.

Joseph D. Rich
Chief, Voting Section

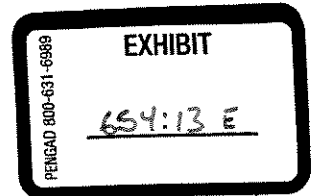
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KELLY A. AYOTTE
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MICHAEL A. DELANEY
DEPUTY ATTORNEY GENERAL



News Release

RELEASED BY: Attorney General Kelly A. Ayotte

SUBJECT: Voting Rights Act – Submission of a request for preclearance of changes to New Hampshire Voting laws and procedures

DATE: June 10, 2005

RELEASE TIME: Immediate

Attorney General Kelly A. Ayotte announces the submission of requests for preclearance of changes made to the election laws in New Hampshire to the Federal Department of Justice. Preclearance submissions will address changes made to New Hampshire's election laws since jurisdictions in the State became subject to preclearance.

Ten New Hampshire towns are subject to section 5 of the federal Voting Rights Act. Changes to New Hampshire election laws that affect any of these ten towns must be submitted for review by either the Federal Department of Justice or the Federal District Court for Washington D.C. The federal Department of Justice will review the changes to New Hampshire's election laws to ensure that the changes do not have the effect of denying or abridging the right to vote on account of race or color, or membership in a language minority group. Changes to New Hampshire redistricting statutes have been submitted to, and approved by, the U.S. Justice Department since the 1980 census. Federal regulations require that the public be notified that the State has filed a request for preclearance and that the submission be available for public inspection.

Copies of each submission by the Attorney General for the State of New Hampshire are available at the office of the Attorney General at 33 Capitol Street, Concord New Hampshire, 03301. Each document will also be made available at the Attorney General's Office web site at:

<http://www.doj.nh.gov/elections/>

Attorney General Ayotte and the federal Department of Justice invite persons interested in this submission to submit comments and information, in writing or by telephone, to the Voting Section of the Federal Department of Justice, Civil Rights Division, at the earliest possible date to ensure that they may be considered during the preclearance review time period. Telephone 1-800-253-3931 or (202) 307-2385 or write Chief, Voting Section, Civil Rights Division, Room 7354 – NWB, Department of Justice, 950 Pennsylvania Ave., NW, Washington, DC 20530. The envelope and first page should be marked "Comment under section 5." Additional information on the Voting Rights Act and the preclearance process can be obtained at the web site of the Federal Department of Justice at:

<http://www.usdoj.gov/crt/voting/index.htm>

The New Hampshire Attorney General's Office Voting section can be contacted at:

<http://www.doj.nh.gov/elections/>
New Hampshire Toll Free 1-866-8868-3703
or 1-866-VOTER03
electionlaw@doj.nh.gov